

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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WESTPORT INSURANCE CORPORATION,

Plaintiff,

-against-

PATRICIA HENNESSEY, ESQ., and COHEN,  
HENNESSEY, BIENSTOCK & RABIN, P.C.  
f/k/a COHEN, HENNESSEY, BIENSTOCK, P.C.,

Defendants.  
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Case No. 07 Civ. 6726 (SHS) (RLE)

**NOTICE OF MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

PLEASE TAKE NOTICE that, upon the declaration of John W. Fried, dated December 7, 2007, the affidavit of Patricia Hennessey, sworn to on November 20, 2007, the affidavit of Harriet Newman Cohen, sworn to on December 6, 2007, Defendants' Local Rule 56.1 Statement of Undisputed Facts, Defendants' Memorandum of Law in Support of Partial Summary Judgment, dated December 7, 2007, and upon all prior pleadings, filings, and proceedings had herein, Defendants hereby move this Court, pursuant to Rule 56 of the Federal Rules of Civil Procedure, at the United States Courthouse, 500 Pearl Street, New York, NY 10007, for partial summary judgment on Defendants' First, Second, and Fourth Counterclaims by (A) declaring that Plaintiff is obligated under its insurance policy to defend and to pay for Defendants' legal defense of an action entitled *Jayne Asher v. Patricia Hennessey, Esq., et al.*, Index No. 1361/2007 (Supreme Court, Westchester County) ("Asher Action"), (B) awarding Defendants damages, measured by the sum of money that they have paid and will pay to Snow Becker Krauss P.C. and McCarthy Fingar LLP, their attorneys in the Asher Action, based on Plaintiff having breached its insurance policy by disclaiming its duty to defend, (C)

awarding Defendants damages, measured by the sum of money that they have paid and will pay to Fried & Epstein LLP to defend this declaratory judgment action, because Westport commenced this action “in an effort to free itself from its policy obligations,” and, if that partial summary judgment is granted, for a dismissal without prejudice of Plaintiff’s action or, in the alternative, for a stay of this action until after the final adjudication of the Asher Action, and for such other and further relief as the Court deems fail, just and equitable.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Court’s Revised Scheduling Order, answering papers are to be served and filed on or before December 28, 2007. Reply papers are to be served and filed on or before January 15, 2008.

Dated: New York, New York  
December 7, 2007

Respectfully submitted,

FRIED & EPSTEIN LLP



By: \_\_\_\_\_  
John W. Fried (JF2667)

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